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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

JEANTY, ROMAIN

ART UNIT

PAPER NUMBER

3623

DATE MAILED: 05/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/751,144	BENDA ET AL.
	Examiner Romain Jeanty	Art Unit 3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 26 February 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-42 is/are pending in the application.

4a) Of the above claim(s) 29-42 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-28 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 .

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_ .

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_ .

### **DETAILED ACTION**

1. This Non-Final action is in response to applicant's election of claims 1-28 of the Restriction/Election of paper number 6. This election is acknowledged.

#### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 3/01/2001. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner. However, the examiner notes that one of the references namely "CDM Tests a Dock Application at Viking Freight, Inc.," CDM Technologies, Inc. November 01 2000. Retrieved from the internet: <[URL: http://www.cdmtech.com/sources/frames/nerws/news\\_2000/viking.pdf](http://www.cdmtech.com/sources/frames/nerws/news_2000/viking.pdf)> internet: was not considered because it was could not be found in the file.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites the limitation "the stock". It is unclear as to what stock applicant is referring. There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

6. Claims 1-28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As per claims 1-28, for a claimed invention to be statutory, the claimed invention must be within the technological arts. The claimed invention does not fall within the technological arts because no form of technology is disclosed or claimed. The examiner notes that the disclosed and claimed invention is directed to nothing more than a human making mental computations and manually determining and optimizing. Therefore, claims 1-28 are deemed to be non-statutory.

#### **Claim Rejections - 35 USC § 102**

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the

international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-4 and 16-19 are rejected under 35 U.S.C 102 (e) as being anticipated by O'Neill et al (U.S Patent No. 6,219,653).

As per claims 1, 16, O'Neill et al discloses:

(a) determining a maximum load of at least one transport vehicle from a plurality of shippers (col. 3, lines 14-18); and

(b) optimizing a maximum load of the at least one transport vehicle "trailer" (col. 3, lines 18-20).

As per claims 2 and 17 O'Neill et al discloses the limitations of claim 2 in the rejection of claim 1 above. In addition, O'Neill et al discloses maximum volume of the transport vehicle (trailer) (col. 3, lines 15-20).

As per claims 3 and 18, O'Neill et al discloses the limitations of claim 3 in the rejection of claim 1 above. In addition, O'Neill et al discloses establishing at least one optimization metric (load parameter) (col. 12, lines 36-38).

As per claim 4 and 19, O'Neill et al discloses the limitations of claim 4 in the rejection of claim 3 above. In addition, O'Neill et al discloses the step of total transportation cost (col. 12, lines 64-66).

8. Claims 5-9, 11-15, 21-24 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill et al as applied to claims 1 and 6 above in view of Sean (Certifying a System's security- A look at government security classification and what they mean to you).

As per claim 5, O'Neill et al discloses all of the limitations in claim 1 above. But O'Neill et al fails to explicitly disclose the step of exercising discretionary control over the products to be shipped. Sean discloses the idea of discretionary control (Pages 2 and 3). It would have been obvious to a person of ordinary skill in the art to modify the disclosures of O'Neill et al to incorporate the discretionary control in the same conventional manner as disclosed by Sean. A person having ordinary skill in the art would have been motivated to use such a modification in order to ensure security of the product to be shipped.

Claim 20 recites the same limitations as rejected claim 5 above; it is rejected under the same rationale.

As per claim 6, the combination of O'Neill et al discloses the limitation of claim 5 above. In addition, O'Neil et al discloses prioritizing the products to be shipped (i.e. specifying different products characteristics associated with the product category and arranging the product characteristic hierarchically) (col. 12, lines 10-15).

Claim 21 recites the same limitations as rejected claim 6 above; it is rejected under the same rationale.

As per claim 7, O'Neil et al discloses the step of optimizing the product shipment temporally among at least one other shipment (i.e. optimizing a maximum load of the at least one product to be shipped (col. 3, lines 18-20).

Claim 22 recites the same limitations as rejected claim 7 above; it is rejected under the same rationale.

As per claims 8 and 9, the combination of O'Neill et al and Sean does not explicitly disclose the idea of a trade allowance to include a rebate. Official Notice is taken that is it old

and well known in the art to provide trade allowance to include discount, bonuses, incentives, inducement, etc). It would have been obvious to person of ordinary skill in the art to incorporate a trade allowance including a rebate, discount, incentive, inducement in O'Neil et. A person having ordinary skill in the art would have been motivated to such well-known features in order to encourage trial of the product by the receiver. In support of the Official Notice, the examiner is citing page 1 of Dialog (THE MARKETERS: trade Promotion).

Claims 23 and 24, recites the same limitations as rejected claim 6 above; it is rejected under the same rationale.

As per claims 11-14, O'Neill et al discloses the idea of manipulating quantity of the product data. But O'Neil et al does not explicitly disclose manipulating the shipment at a cross-dock, wherein the step of manipulating the shipment at a cross-dock includes the step of classifying the shipment with destination indicia, applying a SKU and ensuring that the products entering the cross-dock have a predefined destination beyond the cross-dock. Carol, on the other hand, discloses such s claimed features (See Pages 2-4). It would have been obvious to a person of ordinary skill in the art to incorporate the disclosures of O'Neil with the teachings of Carol. The motivation being to ensure that the product arrives at the desired destination and gets delivered to the customer.

Claim 26-28 recites the same limitations as rejected claims 12-14 above; they are rejected under the same rationale.

As per claim 15, O'Neill discloses the step of tracking the product shipment (col. 3, line 58-65). However, O'Neill et al does not explicitly disclose a vehicle tracking system. Official Notice is taken that it is notoriously old and well known in the transportation art to utilize a

vehicle tracking system for tracking vehicles. It would have been obvious to a person of ordinary skill in the art to include a vehicle tracking system in O'Neill et al. One having ordinary skill in the art would have been motivated to include this well known feature in O'Neil et al in order to track the location of the transport vehicle. In support of the Official Notice, the examiner is citing col. 16, line 60 through col. 17, line 4 of Patent No. 6,088,648 to Shah et al.

8. Claim 10 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill et al as applied to claims 1 and 6 above in view of Carol (From here to there. (Cross-docking by wholesalers).

As per claim 10, O'Neill et al discloses:

Calculating a mix of additional products to be added to at least part of the shipment when a total amount of product shipped is greater than a minimum amount of product initially ordered (col. 12, lines 15-19 and col. 13, lines 6-12),

calculating a mix of additional product to be added to at least part of the shipment when the maximum vehicle load or a combined maximum load of a plurality of vehicles is not exceeded (col. 12, lines 15-19 and col. 13, lines 6-12).

O'Neill et al discloses all of the limitations above, but O'Neil does not explicitly disclose scheduling the shipment from the plurality to arrive at a cross-dock before shipping the product to the at least one receiver. Bernie on the other hand, discloses the idea of scheduling shipment to arrive at cross-dock (Pages 3 and 4). It would have been obvious to a person of ordinary skill in the art to modify the disclosures of O'Neill et al to include scheduling the shipment from the plurality to arrive at a cross-dock before shipping the product to the at least one receiver in the

same conventional manner as disclosed by Carol. A person having ordinary skill in the art would have been motivated to do so in order to effectively distribute the product to the customer.

Optimizing the optimization metric (Note rejection of claim 1 above).

Claim 25 recites the same limitations as rejected claim 10 above; it is rejected under the same rationale.

### **Conclusion**

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Noll et al (U.S. Patent No. 5,803,502) discloses a method for positioning freight inside containers.
- b. Bush (U.S. Patent No. 5,835,377) discloses a method for shipping goods.
- c. Helms et al (U.S. Patent No. 5,880,958) discloses a system for assigning tractor vehicles to freight loads within a transportation system.
- d. Dialog (Bernie) discloses "Information Pulls Food Distribution."

Any inquiry concerning this communication or earlier communications from the examiner should be directed Romain Jeanty whose telephone number is (703) 308-9585. The examiner can normally be reached Monday-Thursday from 7:30 am to 6:00 pm. If attempts to reach the examiner are not successful, the examiner's supervisor, Tariq R Hafiz can be reached at (703) 305-9643.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 308-1113.

Any response to this action should be mailed to:

Application/Control Number: 09/751,144  
Art Unit: 3623

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P.O. Box 1450  
Alexandria, VA 22313-1450

or faxed to: (703) 305-7687

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive,  
Arlington VA, Seventh floor receptionist.

RJ



May 17, 2003.